

FIRST REGULAR SESSION

SENATE BILL NO. 432

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MUNZLINGER.

Read 1st time March 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

1895S.011

AN ACT

To amend chapter 34, RSMo, by adding thereto three new sections relating to transparency in state purchases.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 34, RSMo, is amended by adding thereto three new sections, to be known as sections 34.376, 34.378, and 34.380, to read as follows:

34.376. 1. Sections 34.376 to 34.380 may be known as the "Transparency in Private Attorney Contracts Act".

2. As used in sections 34.376 to 34.380, the following terms shall mean:

(1) "Government attorney", an attorney employed by the state as an assistant attorney general;

(2) "Private attorney", any private attorney or law firm;

(3) "State", the state of Missouri, including state officers, departments, boards, commissions, divisions, bureaus, councils, and units of organization, however designated, of the executive branch of state government, and any of its agents.

34.378. 1. The state shall not enter into a contingency fee contract with a private attorney unless the attorney general makes a written determination prior to entering into such a contract that contingency fee representation is both cost-effective and in the public interest. Any written determination shall include specific findings for each of the following factors:

(1) Whether there exist sufficient and appropriate legal and financial resources within the attorney general's office to handle the matter;

(2) The time and labor required; the novelty, complexity, and

11 difficulty of the questions involved; and the skill requisite to perform
12 the attorney services properly;

13 (3) The geographic area where the attorney services are to be
14 provided; and

15 (4) The amount of experience desired for the particular kind of
16 attorney services to be provided and the nature of the private
17 attorney's experience with similar issues or cases.

18 2. If the attorney general makes the determination described in
19 subsection 1 of this section, the attorney general shall request
20 proposals from private attorneys to represent the department on a
21 contingency fee basis, unless the attorney general determines that
22 requesting proposals is not feasible under the circumstances and sets
23 forth the basis for this determination in writing.

24 3. The state may not enter into a contingency fee contract that
25 provides for the private attorney to receive an aggregate contingency
26 fee in excess of:

27 (1) Twenty-five percent of any recovery of up to ten million
28 dollars;

29 (2) Twenty percent of any portion of such recovery between ten
30 million dollars and fifteen million dollars;

31 (3) Fifteen percent of any portion of such recovery between
32 fifteen million dollars and twenty million dollars;

33 (4) Ten percent of any portion of such recovery between twenty
34 million dollars and twenty-five million dollars; and

35 (5) Five percent of any portion of such recovery exceeding
36 twenty-five million dollars.

37 The aggregate contingency fee shall not exceed fifty million dollars,
38 exclusive of reasonable costs and expenses, and irrespective of the
39 number of lawsuits filed or the number of private attorneys retained to
40 achieve the recovery.

41 4. The state shall not enter into a contract for contingency fee
42 attorney services unless the following requirements are met throughout
43 the contract period and any extensions to the contract:

44 (1) The government attorneys shall retain complete control over
45 the course and conduct of the case;

46 (2) A government attorney with supervisory authority shall be
47 personally involved in overseeing the litigation;

48 **(3) The government attorneys shall retain veto power over any**
49 **decisions made by outside counsel;**

50 **(4) Any defendant that is the subject of such litigation may**
51 **contact the lead government attorneys directly, without having to**
52 **confer with contingency fee counsel;**

53 **(5) A government attorney with supervisory authority for the**
54 **case shall attend all settlement conferences; and**

55 **(6) Decisions regarding settlement of the case shall be reserved**
56 **exclusively to the discretion of the government attorneys and the state.**

57 **5. The attorney general shall develop a standard addendum to**
58 **every contract for contingent fee attorney services that shall be used**
59 **in all cases, describing in detail what is expected of both the contracted**
60 **private attorney and the state, including, without limitation, the**
61 **requirements listed in subsection 4 of this section.**

62 **6. Copies of any executed contingency fee contract and the**
63 **attorney general's written determination to enter into a contingency**
64 **fee contract with the private attorney shall be posted on the attorney**
65 **general's website for public inspection within five business days after**
66 **the date the contract is executed and shall remain posted on the**
67 **website for the duration of the contingency fee contract, including any**
68 **extensions or amendments to the contract. Any payment of contingency**
69 **fees shall be posted on the attorney general's website within fifteen**
70 **days after the payment of such contingency fees to the private attorney**
71 **and shall remain posted on the website for at least three hundred sixty-**
72 **five days.**

73 **7. Any private attorney under contract to provide services to the**
74 **state on a contingency fee basis shall, from the inception of the**
75 **contract until at least four years after the contract expires or is**
76 **terminated, maintain detailed current records, including**
77 **documentation of all expenses, disbursements, charges, credits,**
78 **underlying receipts and invoices, and other financial transactions that**
79 **concern the provision of such attorney services. The private attorney**
80 **shall make all such records available for inspection and copying upon**
81 **request in accordance with chapter 610. The private attorney shall**
82 **maintain detailed contemporaneous time records for the attorneys and**
83 **paralegals working on the matter in increments of no greater than one**
84 **tenth of an hour and shall promptly provide these records to the**

85 attorney general, upon request.

86 8. By February first of each year, the attorney general shall
87 submit a report to the president pro tem of the senate and the speaker
88 of the house of representatives describing the use of contingency fee
89 contracts with private attorneys in the preceding calendar year. At a
90 minimum, the report shall:

91 (1) Identify all new contingency fee contracts entered into
92 during the year and all previously executed contingency fee contracts
93 that remain current during any part of the year, and for each contract
94 describe:

95 (a) The name of the private attorney with whom the department
96 has contracted, including the name of the attorney's law firm;

97 (b) The nature and status of the legal matter;

98 (c) The name of the parties to the legal matter;

99 (d) The amount of any recovery; and

100 (e) The amount of any contingency fee paid.

101 (2) Include copies of any written determinations made under
102 subsections 1 and 2 of this section.

34.380. Nothing in sections 34.376 to 34.380 shall be construed to
2 expand the authority of any state agency or state agent to enter into
3 contracts where no such authority previously existed.

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